THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION CASE NO. 1:23-cv-00353-MR-WCM

ASHLEY BAKER OSBY,	
Plaintiff,	
vs.	ORDER
SCALY MOUNTAIN OUTDOOR CENTER, LLC d/b/a as HIGHLANDS OUTPOST,	
Defendant.	

THIS MATTER is before the Court on the Plaintiff's Motion to Dismiss the Defendant's Counterclaim [Doc. 8]; the Magistrate Judge's Memorandum and Recommendation regarding the disposition of the Plaintiff's Motion to Dismiss the Defendant's Counterclaim [Doc. 13]; and the Defendant's Objection to the Memorandum and Recommendation [Doc. 14].

Pursuant to 28 U.S.C. § 636(b), the Court designated the Honorable W. Carleton Metcalf, United States Magistrate Judge, to consider the Plaintiff's Motion to Dismiss the Defendant's Counterclaim and to submit a recommendation regarding its disposition. On August 28, 2024, the Magistrate Judge entered a Memorandum and Recommendation (the

"Memorandum"), recommending that the Court grant the Plaintiff's Motion to Dismiss the Defendant's Counterclaim. [Doc. 13 at 9]. On September 11, 2024, the Defendant filed an Objection to the Memorandum [Doc. 14], and on September 25, 2024, the Plaintiff filed a Response to the Defendant's Objection [Doc. 15].

After careful review of the Magistrate Judge's Memorandum, the Court finds that the challenged conclusion of law is consistent with current North Carolina case law. Accordingly, the Court accepts the Magistrate Judge's recommendation to grant the Plaintiff's Motion to Dismiss the Defendant's Counterclaim.

IT IS, THEREFORE, ORDERED that the Defendant's Objection to the Memorandum and Recommendation [Doc. 14] is **OVERRULED**, and the Magistrate Judge's Memorandum and Recommendation [Doc. 13] is **ACCEPTED**.

IT IS FURTHER ORDERED that the Plaintiff's Motion to Dismiss the Defendant's Counterclaim [Doc. 8] is **GRANTED**, and the Defendant's Counterclaim, which appears as its nineteenth defense in its Amended Answer and Counterclaim, is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Signed: November 4, 2024

Martin Reidinger

Chief United States District Judge

Filed 11/05/24